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REMARKS

Upon entry of this amendment, claims 35-45 remain in the application.

The Office Action of June 23, 2004 has been received and carefully considered. In response thereto, this Amendment is submitted. It is submitted that, by this Amendment, all bases of rejection and objection are traversed and overcome.

This Amendment is being submitted under the provisions of 37 C.F.R. 1.116. Entry of this Amendment is being sought in this matter as it is believed that the Amendment places the Application in a condition suitable for allowance. Alternately, it is submitted that the Amendment addresses and clarifies issues that would be considered on appeal. Thus, entry pursuant to the provisions of 37 C.F.R. 1.116 is respectfully requested.

Claims 35-45 currently stand rejected under 35 U.S.C. § 102(e) as being anticipated by US Patent No. 5,460,771 to Mitchell et al. The Examiner concludes from his analysis of the history of the present Application that the Applicants' addition of the subject matter regarding substituted and unsubstituted alkenes and acetates into the claim language precipitated the use of Mitchell in the Office Action. According to the Examiner's investigations, this limitation appears to have been added by C.I.P. to Application Serial No. 08/234,298, from which the present Application is related. Serial No. 08/234,298 has a filing date of April 28, 1994. The Examiner indicates that he could find no reference to this subject matter in the parent applications prior to this date. Since the material was apparently introduced into the specification of 08/234,298 by C.I.P., it is held that the earliest date Applicant can be afforded for the subject matter is April 28, 1994.

The Examiner indicates that the patent to Mitchell in question (US 5,460,771) was filed on February 7, 1994, prior to the effective date afforded Applicant on this subject matter. Given this, the Examiner concludes that the reference to Mitchell predates Applicants' filing of an application that supports the

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claim language currently presented in the instant application. The Examiner does invite the Applicants to supply evidence to the contrary regarding this analysis.

The Examiner's attention is directed to the chart attached to this amendment as Appendix A. As indicated by the Examiner, the present Application can be traced directly back through divisionals and continuations to US Serial No. 234,298, filed April 28, 1994. Serial No. 234,298 is a continuation in part of five applications, all listed in the Appendix.

Also attached to this Amendment is a copy of Application Serial No. 07/692,249 filed on October 16, 1992 as Appendix C. The Examiner's attention is directed to page 8, lines 35-37 through page 9, lines 1-16. This paragraph specifies that the tubing construction includes a layer specified therein that is made of a thermoplastic material selected from the group consisting of copolymers of substituted or unsubstituted alkenes having less than four carbon atoms and vinyl alcohol, alkenes having less than four carbon atoms and vinyl acetate, and mixtures thereof. It is submitted that this language, found in Serial No. 962,249 filed October 16, 1992 supports the Applicants' position that the present invention, as pertaining to the aforementioned materials, was not described in a patent granted on an application for patent by another filed before the invention thereof by the Applicant for the patent as the effective filing date with regard to the aforementioned materials in the present application is October 16, 1992. This predates the filing date of the Mitchell reference as well as any priority dates to which the Mitchell patent may be entitled.

With regard to the limitations set forth in claim 35 that the melt processable thermoplastic material of at least one additional layer contains at least one of polyamides and thermoplastic elastomers, support for this is found in Serial No. 962,249 at page 6, lines 28-35. Attention is also directed to Serial No. 868,754 filed April 14, 1992, attached as Appendix D at page 6, lines 24-32 through page 7, lines 1-6.

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As can be seen from the foregoing, the five applications in question filed between April 1992 and October 1992 were combined to form Application Serial No. 234,298. Serial No. 234,298, has multiple parents, two of which have been discussed above. The material that the Examiner considers added by C.I.P. in the specification of 08/234,298 has support in one or more of the multiple parent applications described above. For this reason, it is submitted that the present invention was not described in a patent granted on an application filed by another in the United States before the present invention by the Applicant. Thus, it is submitted that the present invention as set forth in claims 35-45 is improperly rejected under 35 U.S.C. § 102(e) and that the Application as set forth in these claims is not taught, anticipated, or rendered obvious by the Mitchell reference.

Claims 35-45 also stand rejected under 35 U.S.C. 103(a) as being unpatentable over Maillard in view of Mitchell. At the outset, it is respectfully submitted that the secondary reference to Mitchell is unavailable as a reference given the prior discussion with regard to 102(e).

Turning next to the Maillard reference, it is submitted that the Applicants' invention as set forth in Claims 35-45 is not taught, anticipated, or rendered obvious by that reference.

The Maillard reference is cited as teaching a multilayer tubing having a first layer 12 of an extrudable melt-processable thermoplastic material and at least one additional layer 16 also made of an extrudable melt-processable thermoplastic material that can also contain polymers of vinyl alcohols and vinyl acetates with ethylenes and where a third layer can also be provided which can be made of a plastic chemically dissimilar to at least a first layer, of which polyamides can be used as at least one thermoplastic material. The Examiner contends that the Maillard reference discloses all of the recited structure with the exception of how much ethylene is used and using substituted or unsubstituted alkenes with vinyl alcohols or vinyl acetates, and the equal use of polyesters such as polybutylene or polyethylene terephthalate. It is the Examiner's position that it would have been

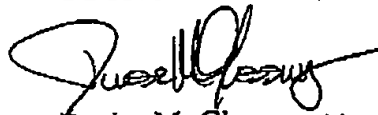
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anticipated or rendered obvious by the cited references. For these reasons, it is submitted that the Applicants' invention as set forth in claims 35-45 is not taught, anticipated or rendered obvious by the references. Further, it is submitted that the Applicants' invention as set forth in these claims is in a condition suitable for allowance. Notice of allowance is, therefore, respectfully requested.

Respectfully submitted,

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